

Letter of Findings: 04-20130297P
Negligence Penalty
For Tax Periods October 31, 2009, through January 31, 2013

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the negligence penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state company which sells tangible personal property through internet to Indiana residents. As a retail merchant, Taxpayer is required to file its Indiana sales tax returns, ST-103 forms, and to remit the sales tax it collects to the Indiana Department of Revenue ("Department"). However, for tax periods October 31, 2009 through January 31, 2013, Taxpayer filed the sales tax returns and remitted the sales tax it collected after the statutory due dates. As a result, the Department assessed Taxpayer additional penalty and statutory interest.

Taxpayer requested that the Department abate the negligence penalty. A phone hearing was conducted. This Letter of Findings results and is based on the information within Taxpayer's protest file and the Department's records. Further facts will be supplied as required.

I. Tax Administration – Negligence Penalty.

DISCUSSION

The Department imposed a ten percent negligence penalty for the tax periods in question. Taxpayer requested that the Department abate the negligence penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and

circumstances of each case.

Upon review, Taxpayer has provided sufficient documentation to demonstrate that it has reasonable cause for penalty abatement. Thus, Taxpayer's protest of the imposition of negligence penalty is sustained.

FINDING

Taxpayer's protest of the imposition of negligence penalty is sustained.

Posted: 09/25/2013 by Legislative Services Agency

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